No. 94-395

FILED
JAN 30 1995

In the Supreme Court of the United States

OCTOBER TERM, 1994

UNITED STATES OF AMERICA, PETITIONER

v.

LORI RABIN WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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The Internal Revenue Code provides separate remedies for taxpayers and non-taxpayers. Taxpayers who have paid taxes that have been assessed against them, and who have filed an administrative refund claim in accordance with the requirements of Section 6511(a) of the Code, may bring suit under 28 U.S.C. 1346(a)(1) to challenge an invalid assessment or an unlawful collection of the challenged tax. See 26 U.S.C. 7422(a). Following enactment of a set of statutory provisions known as the Taxpayers' Bill of Rights in 1988 (Pub. L. No. 100-647, Tit. VI, Subtit. J, § 6241(a), 102 Stat. 3747), a "taxpayer" is now also authorized to bring suit against the United States for the "actual, direct economic damages" sustained due to the reckless or intentional disregard of any provisions of the Internal Revenue Code

or its regulations "in connection with any collection of Federal tax" (26 U.S.C. 7433(a), (b)(1)).[1]

Different remedies have been made available to non-taxpayers. See Pet. Br. 17-20; note 1, *supra*. In particular, non-taxpayers whose property has been made subject to a federal lien or levy in satisfaction of another's tax obligation may bring suit against the government under 28 U.S.C. 2410(a) to quiet title to the property or under 26 U.S.C. 7426 to enjoin, or seek the

[1] The damages remedy that 26 U.S.C. 7433 provides for intentional disregard of the Code or regulations in the collection of taxes is available only to "taxpayer[s]." 26 U.S.C. 7433(a). The statute does not apply to a complaint by a non-taxpayer concerning the collection of taxes. See *Le Premier Processors, Inc.* v. *United States*, 775 F. Supp. 897, 903 (E.D. La. 1990) ("the very terms of section 7433(a) limit its remedies to just the taxpayer against whom the IRS has asserted the tax assessment"). In a parallel manner, the remedies available to non-taxpayers for invalid collection actions under 26 U.S.C. 7426 (entitled "Civil actions by persons other than taxpayers") are "not available to persons against whom the tax has been assessed." *United States* v. *Doyal*, 462 F.2d 1357, 1358 (5th Cir. 1972) (per curiam). See 26 U.S.C. 7426(a)(1) (statutory remedy for wrongful levy may be brought by "any person (other than the person against whom is assessed the tax out of which such levy arose)").

The damages remedy created by 26 U.S.C. 7433 applies, by its terms, only to unlawful collection activities; it is inapplicable to claims that the Service has incorrectly calculated or unlawfully imposed the underlying tax itself. As the court stated in *Gonsalves* v. *Internal Revenue Service*, 975 F.2d 13, 16 (1st Cir. 1992) (per curiam):

> Taxpayers who wish to challenge the IRS' calculation of their tax liability must file either a petition for redetermination in the Tax Court, 26 U.S.C. §§ 6213, 6214, or a refund action in the district court. 26 U.S.C. § 7422. Section 7433 was not intended to supplement or supersede, or to allow taxpayers to circumvent, these procedures.

return of funds obtained by, a wrongful levy. As an alternative remedy, non-taxpayers whose property has been made subject to a lien with respect to another's tax obligation may obtain a prompt discharge of that lien by agreeing to hold sufficient proceeds from the sale of the property as substituted collateral for the government's claim, with the same priority as the preexisting lien. 26 U.S.C. 6325(b)(3). Upon completion of such a sale, the respective rights of the non-taxpayer and the government in the substituted cash collateral are to be determined in federal court under 26 U.S.C. 7426(a)(3) and (b)(4). See Pet. Br. 17-18. Unlike the statutory refund suit for "taxpayers" under 28 U.S.C. 1346(a)(1), in each of these various proceedings that Congress has authorized *non*-taxpayers to bring, the underlying "assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid." 26 U.S.C. 7426(c).

Respondent seeks to disregard the important distinctions drawn in the Code between the remedies separately provided for taxpayers and non-taxpayers. Respondent's contention that a non-taxpayer may bring a refund suit under 28 U.S.C. 1346(a)(1) suffers from the obvious logical flaw that the narrowly drawn remedies provided to non-taxpayers under 26 U.S.C. 7426 would thereby be made wholly meaningless. Under respondent's theory, non-taxpayers need not comply with the abbreviated nine-month statute of limitations applicable to non-taxpayer challenges to tax collection under 26 U.S.C. 6532(c), and would be permitted to challenge the validity of the underlying assessment notwithstanding the clear contrary dictates of 26 U.S.C. 7426(c), simply by styling their case as a "taxpayer" refund suit under 28 U.S.C. 1346(a)(1). Respondent's proposed blurring of the separate remedial schemes that Congress provided

for "taxpayers" and "non-taxpayers" misreads the complex of applicable statutes and would yield a remedial scheme susceptible to abuse.

1. As a preliminary matter, respondent has misdescribed various features of the factual record. The courts below addressed only the question whether jurisdiction exists under 28 U.S.C. 1346(a)(1) for respondent's suit to recover the taxes she paid that her former husband owed. As respondent ultimately concedes (Resp. Br. 7), in deciding that jurisdictional question the lower courts did not determine the validity of the tax assessments that the United States made against respondent's former husband or of the liens imposed on the property that he transferred to her. Because only the jurisdictional question is presented at this time, respondent's misdescriptions of the record relating to the validity of the government's liens and of the underlying assessments are presently irrelevant. We therefore respond only briefly to them in the margin.[2]

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[2] Respondent erroneously states that the government "ultimately stipulated" (Resp. Br. 4) that it erred in imposing its liens on respondent's property. The stipulation to which respondent refers is described fully in our opening brief (Pet. Br. 6 n.1). That stipulation establishes that respondent did *not* take her husband's interest in the property as a "purchaser." The property interest that she obtained from her husband therefore remains subject to the liens arising from his tax obligations (*ibid.*).

Respondent further deviates from the record by contending that she was personally unaware of the provisions of 26 U.S.C. 6325(b)(3) which would have permitted her to obtain an immediate release of the government's liens (so that her pending sale could be concluded) simply by agreeing to substitute a sufficient portion of the sale proceeds as collateral for the government's tax claim. Respondent provides no citations to the record for the assertion that she "believed that she had no realistic alternative, and none was suggested to her by the IRS" (Resp. Br. 5). If, at some

2. Respondent offers four interpretive rationales for her contention that 28 U.S.C. 1346(a)(1) authorizes refund suits by non-taxpayers who pay taxes owed by a third party. None of respondent's proposed theories is correct.

a. The principal rationale advanced by respondent, and by the court of appeals in this case, is that the "plain language" of the statute supports the conclusion that anyone—whether a taxpayer or not—may bring suit under 28 U.S.C. 1346(a)(1) to challenge the assessment or collection of taxes. As we have described in detail in our opening brief (Pet. Br. 11-15), however, that contention is based on the erroneous assumption that the language of 28 U.S.C. 1346(a)(1) may properly be read in complete isolation from all other applicable provisions of the Internal Revenue Code. In particular, respondent's contention ignores the expressly applicable provisions of 26 U.S.C. 7422(a).

As this Court has noted, "[b]y its express langauge, [26 U.S.C. 7422(a)] conditions a district court's authority to hear a refund suit, regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected, upon the filing of a claim for refund." *United States* v. *Dalm*, 494 U.S. 596, 609 n.6 (1990). Because only the "taxpayer" may assert a valid claim for refund of federal tax (26 U.S.C. 6511(a)), only a "taxpayer" who has done so may bring a suit for refund under 28 U.S.C. 1346(a)(1). That result follows from the "express

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appropriate stage of the case, those facts were relevant, the government would contest both of them. At present, it is sufficient to note that respondent's alleged ignorance of the applicable sections of the Internal Revenue Code—an asserted ignorance that we would dispute—has no bearing on the jurisdictional question presented to this Court.

language" of 26 U.S.C. 7422(a) which, by its very terms, limits the scope of the jurisidiction otherwise afforded under 28 U.S.C. 1346(a)(1). See *United States* v. *Dalm*, 494 U.S. at 609 n.6.[3]

By failing to consider the plain language of *all* of the applicable statutes, the court of appeals in this case reached an incorrect understanding of this detailed statutory scheme. By contrast, other courts of appeals and Congress have recognized that the Internal Revenue Code provides distinctly separate remedies for taxpayers and non-taxpayers and that only "taxpayers" may bring a refund suit under 28 U.S.C. 1346(a)(1).[4] See Pet. Br. 13-

[3] Respondent suggests that this understanding of the statutory scheme cannot be correct because the government "argues out of the other side of their mouth that the Code provided respondent with various alternative remedies for her predicament" (Resp. Br. 9 n.5). The very fact that the Code *does* provide separately structured and limited remedies for *non*-taxpayers makes sense, however, precisely *because* the Code does not authorize refund suits on behalf of non-taxpayers under 28 U.S.C. 1346(a)(1). If non-taxpayers could bring refund suits, the separate remedies that Congress provided for non-taxpayers under 26 U.S.C. 7426 would have been unnecessary. See pages 11-12, *infra*.

[4] Respondent acknowledges (Resp. Br. 23) that numerous appellate decisions have construed this statutory scheme to permit refund actions under 28 U.S.C. 1346(a)(1) only for "taxpayers." Respondent contends nonetheless that "there were a number of cases that went against the government" (Resp. Br. 24). Two of the appellate cases that respondent cites (*Parsons* v. *Anglim*, 143 F.2d 534 (9th Cir. 1944), and *United States* v. *Halton Tractor Co.*, 258 F.2d 612 (9th Cir. 1958)) are addressed in our opening brief (Pet. Br. 14-15 n.4). Neither of those decisions discusses or addresses the jurisdictional scope of 28 U.S.C. 1346(a)(1). The other appellate decision cited by respondent (*White* v. *Hopkins*, 51 F.2d 159 (5th Cir. 1931)) merely concluded that, on the facts of that case, the plaintiff was the "taxpayer." In holding that suits by non-taxpayers are not authorized by 28 U.S.C. 1346(a)(1), the

14, 18-19. In particular, in enacting 26 U.S.C. 7426 (a provision entitled "Civil actions by persons other than taxpayers") in 1966, Congress emphasized that the remedies created by that statute were necessary precisely because no other remedies had been made available to non-taxpayers: although a "taxpayer [could] bring a refund action against the Government," "a third person" whose property was subjected to levy for

Seventh Circuit noted in *Busse* v. *United States*, 542 F.2d 421, 425 (1976), that cases such as those on which respondent seeks to rely "must be viewed in light of the failure of the Code prior to [the enactment of 26 U.S.C. 7426 in 1966] to provide a remedy for a third party whose property or interest in property was harmed by a wrongful government levy. The Senate Report on 26 U.S.C. § 7426, which remedied this deficiency, noted that some courts tried to cure the inequitable situation by allowing suits in such cases against IRS' district directors." 524 F.2d at 425. The court concluded in *Busse* that the same decisions that respondent cites to this Court "were perhaps motivated by a similar concern." *Ibid.*

Respondent further contends that, in the cases in which courts of appeals have declined to allow non-taxpayers to bring suit under 28 U.S.C. 1346(a)(1), the facts differ from "this case, where respondent herself was made to pay the tax obligation of another out of her own money" (Resp. Br. 32). Respondent's description of the present case is not accurate: (i) she was not "made to pay" the taxes, for she could simply have held a portion of the sale proceeds of the property under a substituted collateral agreement and litigated the validity of the government's liens in an orderly manner (26 U.S.C. 7426(a)(3)); and (ii) the taxes were not paid "out of her own money" but were instead paid out of the portion of the property's value that she acquired from her husband subject to the government's lien. There is nothing unique about the facts of the present case; respondent was not the "taxpayer" who was "subject to" the tax debt (26 U.S.C. 7701(a)(14)) and is therefore not authorized to bring suit under 28 U.S.C. 1346(a)(1). See, *e.g.*, *Pershing Division of Donaldson, Lufkin & Jenrette Securities Corp.* v. *United States*, 22 F.3d 741 (7th Cir. 1994); *Busse* v. *United States*, 542 F.2d 421 (7th Cir. 1976).

payment of another's taxes was previously "without a remedy against the Government." S. Rep. No. 1708, 89th Cong., 2d Sess. 29 (1966); H.R. Rep. No. 1884, 89th Cong., 2d Sess. 27 (1966).[5]

The understanding that Congress expressed in its enactment of Section 7426—that a non-taxpayer may not bring a refund suit under 28 U.S.C. 1346(a)(1)—reflects the natural language of the applicable statutory provisions. As several of the courts of appeals have concluded, that natural reading of the language of the statutes is further reinforced by the established rule that "any waiver of the National Government's sovereign immunity must be unequivocal" and that such waivers are not to be "enlarge[d] * * * beyond what the language requires" (*United States Dep't of Energy* v. *Ohio*, 112 S. Ct. 1627, 1633 (1992)). See, *e.g.*, *Snodgrass* v. *United States*, 834 F.2d 537, 540 (5th Cir. 1987); *Phillips* v. *United States*, 346 F.2d 999, 1000 (2d Cir. 1965).

b. Respondent next contends that, even if the provisions of 26 U.S.C. 7422(a) and 26 U.S.C. 6511(a) permit only a "taxpayer" to bring suit under 28 U.S.C. 1346(a)(1), the word "taxpayer" in this context must be understood "in its generic sense" to refer simply to any "person that pays taxes" (Resp. Br. 15). In making that contention, respondent ignores 26 U.S.C. 7701(a)(14), which defines the term "taxpayer"—as used in the provisions of the Code (including, of course, 26 U.S.C. 6511(a))—to mean "any person subject to any internal revenue tax." This statutory definition of "taxpayer" reflects the traditional understanding of that term as referring to "the person ultimately liable for the tax

[5] In recent legislation, Congress has continued its long-standing practice of providing distinctly separate remedies for "taxpayers" and non-taxpayers. See note 1, *supra*.

itself" (*Colorado National Bank* v. *Bedford*, 310 U.S. 41, 52 (1940)).

It is undisputed that respondent's husband, not respondent, is the "taxpayer" who was "subject to" the tax and ultimately liable for it. The taxes involved in this case were assessed solely against respondent's husband; she was not personally liable for his obligation. Pet. App. 2a, 8a.

The tax lien that resulted from her husband's personal liability was imposed on property "belonging to" respondent's husband. 26 U.S.C. 6321. When that property came into respondent's hands, the lien followed along. See Pet. Br. 6-7 & n.1. The fact that respondent thereafter elected to pay her husband's taxes—to remove the lien on the property he had transferred to her—does not make respondent the person who was "subject to," or "ultimately liable for," the tax. Respondent's suggestion that a non-taxpayer becomes a "taxpayer" by paying another's tax obligation does not comport with the language of Section 7701(a)(14). It also would make nonsense of the numerous remedies that the Code provides separately for "taxpayers" and non-taxpayers whose property has become the subject of federal tax collection efforts. See, *e.g.*, 26 U.S.C. 7426; note 1, *supra*.

Respondent further errs in suggesting (Resp. Br. 17) that the fact that she submitted an administrative refund request to the Internal Revenue Service converts her into the "taxpayer" for the purpose of these statutory provisions. Both the applicable statute and its implementing regulations specify that the "[c]laim for credit or refund of an overpayment" that is required under 26 U.S.C. 7422(a) to permit an action to proceed under 28 U.S.C. 1346(a)(1) "shall be filed by the taxpayer" (26 U.S.C. 6511(a); 26 C.F.R. 301.6511(a)-1(a) and (b)). The fact that a non-taxpayer, such as respondent, files an

administrative refund claim does not convert her into the "taxpayer" to satisfy this jurisdictional requirement. *Economy Plumbing & Heating Co.* v. *United States*, 470 F.2d 585, 590 (Ct. Cl. 1972); *Ray* v. *United States*, 453 F.2d 754, 758 (Ct. Cl. 1972).

c. Respondent contends that, if the refund suit permitted under 28 U.S.C. 1346(a)(1) is available only for suits brought by "taxpayers," part of the language of that statute would be deprived of any meaning. She asserts that the language in 28 U.S.C. 1346(a)(1) "authorizing jurisidiction * * * of an erroneous assessment *or* an erroneous collection would have no meaning because there would always have to be an assessment against a 'taxpayer' (according to petitioner's definition of 'taxpayer') and the words 'or collected' would be rendered irrelevant" (Resp. Br. 12).

This assertion is also incorrect. There are many situations, in addition to the one that respondent herself describes (Resp. Br. 13 n.6), where a taxpayer may challenge a tax that has been wrongfully collected *even though* the assessment itself is valid and is not challenged by the taxpayer. For example, an assessment may not lawfully be collected after the applicable statute of limitations has expired. See 26 U.S.C. 6502(a). A taxpayer who has been subjected to collection past the applicable statute of limiations may bring suit for refund under 28 U.S.C. 1346(a)(1) even though the assessment itself is not challenged. See *Ewing* v. *United States*, 914 F.2d 499, 503-504 (4th Cir. 1990), cert. denied, 500 U.S. 905 (1991).[6]

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[6] Refund suits are authorized for an "overpayment" of tax. *United States* v. *Dalm*, 494 U.S. at 609 n.6; *Lewis* v. *Reynolds*, 284 U.S. 281, 283 (1932). Under 26 U.S.C. 6401(a), the term "overpayment" includes "that part of the amount of the payment of any

Moreover, the premise of respondent's contention rests upon a logical fallacy. It is not correct that "there would always have to be an assessment against a 'taxpayer'" (Resp. Br. 12). An "assessment" is an administrative record of the tax which is filed in the office of the Secretary. 26 U.S.C. 6203. The filing of such an "assessment" in the office of the Secretary is a prerequisite to administrative enforcement procedures such as imposing a lien on the taxpayer's property. See 26 U.S.C. 6322. The filing of an "assessment" is not, however, a prerequisite to a judicial action by the United States for collection of the tax. See 26 U.S.C. 6501(a) (limiting the commencement of any "proceeding in court without assessment for the collection of such tax" to the period within which which an assessment could be timely filed). An administrative assessment is not a necessary prerequisite to the establishment of a tax liability or for collection of a tax.

We agree with respondent that, when possible, statutes should be interpreted in a manner that gives meaning to each of their provisions. The interpretation of 28 U.S.C. 1346(a)(1) that the Internal Revenue Service and Congress have consistently endorsed is consistent with that objective. By contrast, the interpretation that respondent proposes for 28 U.S.C. 1346(a)(1) would deprive the specific remedies that Congress provided for *non*-taxpayers in 26 U.S.C. 7426 of any plausible scope. If non-taxpayers may sue under 28 U.S.C. 1346(a)(1) to obtain the return of monies collected by the government from the sale of liened properties, then the specific (and more limited) remedies that Congress enacted in 26

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internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto."

U.S.C. 7426 to address that exact situation were unnecessary and ultimately meaningless.[7]

Respondent misses the point by contending that "nothing in the legislative history to section 7426 * * * indicates that it is designed to be the exclusive remedy for third parties" (Resp. Br. 22). What the legislative history of Section 7426 reflects is that this statute was enacted precisely because no *other* remedy for non-taxpayers existed. The remedies of Section 7426 are "exclusive" only in the sense that Congress has not provided alternative remedies for non-taxpayers and, in particular, has not provided authority for non-taxpayers to pursue tax refund suits under 28 U.S.C. 1346(a)(1). See S. Rep. No. 1708, *supra*, at 29; H.R. Rep. No. 1884, *supra*, at 27.

d. Respondent further contends that she should be regarded as the "taxpayer" for purposes of a refund suit under 28 U.S.C. 1346(a)(1) because she tendered payment "under duress of an imposition of a lien during foreclosure of property about to be sold" (Resp. Br. 7-8). But Congress did not require respondent to pay these taxes; they were due only from her husband (Pet. 2a, 8a-9a). Congress also did not require respondent to pay the taxes in order to obtain a release of the federal tax lien on her husband's property. Indeed, if respondent had followed the statutory mechanism that Congress provided, there would have been no need for a "refund" suit at all. Under 26 U.S.C. 6325(b)(3), a person whose property becomes subject to a tax lien arising from the

[7] This is confirmed by the fact that 26 U.S.C. 7426(a)(1) expressly makes the remedy provided by that statute available only to "any person (other than the person against whom is assessed the tax out of which the levy arose)"—and thus unavailable to a "taxpayer."

activities of a third person may obtain an immediate certificate of discharge of the lien by agreeing with the Secretary to hold the proceeds of a sale of the property "as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property" (*ibid.*). The respective rights of the non-taxpayer and the United States in that fund (and, in particular, the validity of the federal tax lien in the property) may then be determined in a suit brought in federal district court. 26 U.S.C. 7426(a)(3). If the non-taxpayer prevails in that suit, "the court may grant judgment [in that party's favor] in an amount equal to all or any part of the amount of such fund." 26 U.S.C. 7426(b)(4).

Respondent cannot plausibly suggest that she paid taxes owed by her husband under duress when, under the applicable statutes, she was not required to pay the taxes at all, even in order to conclude her pending sale of the property. She was only required thereafter to submit to an orderly adjudication of her rights, which is not "duress."[8]

3. Respondent errs in contending (Resp. Br. 26-28) that tax refund suits by non-taxpayers would not result

[8] Respondent errs in contending that the remedy provided by 26 U.S.C. 6325(b)(3) is impractical because the Secretary has "discretion" in determining in each instance whether to enter into a substitution of collateral agreement (Resp. Br. 8). It was obviously appropriate for Congress to give the Secretary discretion to determine, in individual factual contexts, what requirements should be attached to a substitution of collateral agreement in order to provide full protection for the government's tax claim. There is no suggestion in this case, or in any other case of which we are aware, that the Secretary's discretion under this statute has been abused.

in confusion or abuse. Respondent attempts to distinguish the situation (i) where a non-taxpayer pays taxes owed by a third person after a lien is filed on property from (ii) that of a person who "simply volunteer[s] to pay the tax for another and then file[s] a claim for refund" (Resp. Br. 26). Respondent suggests that abuse can occur only in the latter context, which she describes as the "true volunteer" situation.

Nothing in the text of any of the applicable statutes supports the hypothetical distinction that respondent attempts to draw between "the true volunteer situation" (Resp. Br. 27) and the non-volunteer situation. In any event, as we have explained, respondent was a "true volunteer" (in the sense that she uses that term) because she failed to pursue the available statutory alternative of obtaining an immediate release of the lien by agreeing to substitute as collateral for the lien an appropriate share of the proceeds of her proposed sale of the property. See pages 12-13, *supra*; 26 U.S.C. 6325(b)(3).

A tax lien is not imposed on property belonging to a third party. Instead, it is imposed only on property "belonging to" the taxpayer. 26 U.S.C. 6321. For the reasons described in detail in our opening brief (Pet. Br. 20-21 & nn.3, 10), it is when a taxpayer *transfers* property encumbered by such a lien to a third party (as in the present case) that the possibility of delay and evasion of the final payment of tax would occur if non-taxpayers were permitted then to remit payment and bring "refund" suits under 28 U.S.C. 1346(a)(1).

For the foregoing reasons and the reasons stated in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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JANUARY 1995